

## **Motion to Reconsider**

An Immigration Judge may upon her or his own motion at any time, or upon motion of DHS or the alien, reconsider any case in which she or he has made a decision unless jurisdiction is vested with the BIA. 8 C.F.R. § 1003.23(b)(1). An alien may file only one motion to reconsider, and such motion must be filed within thirty days of the date of entry of a final administrative order of removal, deportation, or exclusion. 8 C.F.R. § 1003.23(b)(1). The time and numerical limitations for motions do not apply to motions by DHS in removal proceedings. 8 C.F.R. § 1003.23(b)(1). Nor do they apply to motions filed by DHS in deportation or exclusion proceedings when the basis of the motion is fraud in the original proceeding or a crime that would warrant termination of asylum in accordance with 8 C.F.R. § 1208.22(e). 8 C.F.R. § 1003.23(b)(1).

A motion to reconsider is a “request that the Board reexamine its decision in light of additional legal arguments, a change of law, or perhaps an argument or aspect of the case which was overlooked.” Matter of O-S-G-, 24 I&N Dec. 56, 57 (BIA 2006) (quoting Matter of Ramos, 23 I&N Dec. 336, 338 (BIA 2002)). “A motion to reconsider contests the correctness of the original decision based on the previous factual record, as opposed to a motion to reopen, which seeks a new hearing based on new or previously unavailable evidence.” O-S-G-, 24 I&N Dec. at 57-58. A motion to reconsider must state the reasons for the motion by specifying the errors of fact or law in the Immigration Judge’s prior decision and be supported by pertinent authority. 8 C.F.R. § 1003.23(b)(2). However, a motion that merely restates the arguments previously raised will be properly denied. Khan v. Gonzales, 495 F.3d 31, 36-37 (2d Cir. 2007).

The BIA has held that:

a motion to reconsider should, consistent with the statute and regulations set forth at 8 C.F.R. § 1003.23(b)(2), include the following: (1) an allegation of material factual or legal errors in the Board’s decision that is supported by pertinent authority; (2) if the Board summarily affirmed the Immigration Judge’s decision, showing that the alleged errors and legal argument were previously raised on appeal and a statement explaining how the Board erred in affirming the Immigration Judge’s decision under the AWO regulations; and (3) if there has been a change in law, a reference to the relevant statute, regulation, or precedent and an explanation of how the outcome of the Board’s decision is materially affected by the change.

O-S-G-, 24 I&N Dec. at 60.